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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

Attorney General Opinion No. 17-IB46

September 7, 2017

VIA U.S. MAIL & EMAIL

Mike Kwiecien
34820 Rickards Rd.
Frankford, DE 19945
info@explorerhomes.com

RE: September 2, 2017 Correspondence Regarding the Sussex County Planning & Zoning Commission


Dear Mr. Kwiecien:

We write regarding your correspondence, received on September 2, 2017, alleging that the Sussex County Planning & Zoning Commission (the "Commission") violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10007 ("FOIA").

In your correspondence, you state that you submitted documents to the Commission – which we understand to have been in opposition to an application to amend a conditional use ordinance – to be made a part of the "public record." You then allege that Commission failed to share those documents with the Sussex County Council (the "Council") prior to the Council's final consideration of the matter at its August 29, 2017 meeting.

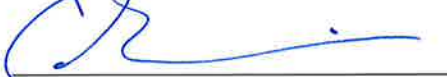
Accepting all of your factual allegations as true, we can find no basis to conclude that the Commission's actions amounted to a FOIA violation. As such, this matter is now closed.¹

Very truly yours,



Michelle E. Whalen
Deputy Attorney General

APPROVED BY:



Aaron R. Goldstein
State Solicitor

cc: LaKresha S. Roberts, Chief Deputy Attorney General (via email)
J. Everett Moore, Jr., Esq. (via email)

¹ We note that you state that you contacted this Office “because elected officials are governed by a set of guidelines and integrity and fairness must be at the forefront.” You also allege that the Council “clearly presented” your opponents’ materials with the Council prior to the August 29, 2017 hearing. Under the circumstances, we believe it important to note that the petition process outlined in 29 *Del. C.* § 10005(e) is limited to a determination of whether a violation *of FOIA* has occurred or is about to occur. While we have determined that the Commission’s conduct did not amount to a FOIA violation, we offer no opinion regarding whether the Commission’s conduct comports with the Delaware State Employees’, Officers’ and Officials’ Code of Conduct, the Commission’s Rules of Procedures, Sussex County Code, or any other provision of law. Indeed, any such determination would fall outside the scope of FOIA.